R E M A R K S

- Claims **2-10 and 18-38** are currently pending;
- Claims **2-10 and 18-38** stand rejected;
- Claims **2-10 and 18-38** are in condition for allowance.

1.   <u>Claim Rejections – 35 USC §112</u>

Claims **3-5** are rejected under 35 USC §112 as failing to comply with the enablement requirement.

The Examiner asserted that the "claim language fails to establish the relation between the first and second gaming device/feature in terms of game play, location, etc. therefore providing an unclear scope of the claims." (<u>Office Action</u>, page 2).

Applicants respectfully assert that it is clear, as logic and claim interpretation dictate, that the first feature is related to the second feature as being <u>other</u> than the second feature. Likewise, the first gaming device is related to the second gaming device as being <u>other</u> than the second gaming device. As a result, claims **3-5** are in condition for allowance.

2.   <u>Claim Rejections – 35 USC §102</u>

The Examiner rejected claims 34-38 under 35 USC §102(b) as being anticipated by Rowe (US 7,162,036 B2) (hereinafter, "<u>Rowe</u>").

The Examiner asserted that Rowe discloses "generating a signature that uniquely represents the plurality of gaming objects associated with the current gaming application (Rowe: abstract). The term gaming object (Rowe: col. 3, lines 39-41) is viewed within the scope of object oriented

programming by the prior art (Rowe: col. 2, lines 24-26). The prior art identifies the current state of the gaming application by creating an authentication code based on the unique signatures of the objects (Rowe: col. 3, lines 50). The unique ID or signature is then verified by an application game server (Rowe: col. 9, lines 20-28) by comparing a stored signature with the transmitted version and then displaying the appropriate message (Rowe: col. 9, lines 60-67)." (Office Action, page 2).

Applicants respectfully assert that the Examiner is in error when interpreting the teachings of Rowe. Specifically, Applicants assert that Rowe does not teach the following elements of claim **34**:

- *accumulating data relating to usage of at least one feature of a gaming device*; and
- *generating an authentication code based on the data.*

At the Examiner's citation to Rowe: col. 9, lines 20-28, the following is stated:

> FIG. 5 is a flowchart 500 illustrating an exemplary process by which a previously generated gaming application signature is used to authenticate a corresponding gaming application deployed in the field. In response to a visit by a gaming industry regulator to a gaming establishment, access to the establishment's gaming application server (e.g., server 124 of FIG. 1C) is typically provided for the purpose of verifying compliance with the applicable gaming regulations (502). This access may be direct, i.e., via the network administrator's terminal, or indirect, e.g., via a particular gaming machine or other node on the establishment's gaming network.

Later, at col. 9, lines 50-60, Rowe teaches:

An object signature is generated for each of the retrieved objects according to one or more of a variety of techniques as described above (508). The generated object signatures are then combined to form a signature corresponding to the deployed gaming application (510). As mentioned above, this may be achieved using any of a wide variety of conventional and proprietary techniques.

The deployed gaming application signature is then compared to the previously stored original gaming application signature which corresponds to the version of the game certified by the gaming commission (512).

As is evident, Rowe teaches generating a signature for a gaming application and subsequent certification of the gaming application by comparing a previously stored signature with a signature generated by a regulator with access to the gaming machine. Quite simply, Rowe nowhere teaches, at the Examiner's citations or elsewhere, *generating an authentication code based on the data [relating to usage of at least one feature of a gaming device]* as claimed. Specifically, to the extent that Rowe teaches any generation of a code, such a code comprises a gaming application signature and is most emphatically not generated based on data *relating to usage of at least one feature of a gaming device* as claimed.

Applicants further note that the Examiner has failed to even assert, much less substantiate, any teaching by Rowe of anything related to a feature of a gaming device. As a result, the Examiner has provided no evidence, let alone substantial evidence, of a teaching of this element by Rowe, and, as a result, has failed to assert a *prima facie* argument for

obviousness with regards to claim **34**. For all of these reasons, claim **34** is in condition for allowance.

With regards to claim **35**, Applicants respectfully assert that the Examiner is in error when interpreting the teachings of Rowe. Specifically, Applicants assert that Rowe does not teach the following elements of claim **35**:

- *receiving data relating to usage of at least one feature of a gaming device;* and
- *receiving an authentication code based on the data.*

Applicants note that these elements are similar to those discussed above with reference to claim **34** and, for the reasons discussed above, are likewise in condition for allowance. Applicants further note that all of claims **35-37** depend upon claim **35** and incorporate all of the elements and limitations of claim **35**. As a result, for the reasons discussed above, claims **35-37** are in condition for allowance.

With regards to claim **38,** Applicants assert that Rowe does not teach the following element of claim **38**:

- *receiving data relating to usage of at least one feature of a gaming device.*

Applicants respectfully assert that the Examiner has provided no evidence, let alone substantial evidence, of a teaching of this element by Rowe, and, as a result, has failed to assert a *prima facie* argument for obviousness with regards to claim **38**. For at least this reason, claim **38** is in condition for allowance.

3.   Claim Rejections – 35 USC §103

The Examiner rejected claims **2-9 and 18-19** under 35 USC §103(a) as allegedly being unpatentable over Acres (US 6,375,567 B1)(hereinafter, "Acres") in view of Rowe.

It is well settled, as stated at MPEP §2143 (A), "The rationale to support a conclusion that the claim would have been obvious is that **all the claimed elements were known in the prior art** and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art. *KSR*, 550 U.S. at ___, 82 USPQ2d at 1395." (emphasis added).

The Examiner asserted that Acres discloses "After a triggering event for a secondary event occurs, a parameter related to the machine is measured (Acres: col. 6, lines 56-57) as a means to determine the results of the secondary game (Acres: col. 10, lines 39-40). In other words, a player is allowed to win at a secondary game if an action like of total coins played, the rate of the machine, a maximum bet made, etc. is met (Acres: col. 6, lines 56-57) compared to a predetermined criteria (Acres: col. 3, lines 49-53). 3. Regarding claims 2, the prior art teaches determining from a gaming machine a measure of profitability, total coins played since the last triggering event (Acres: Acres: col. 10, 29-30), the rate of play or a

maximum bet (Acres: col. 6, lines 56-57). The collected information is compared a predetermined criteria, the 400th coin-in (Acres: col. 10, line 30) or one coin played on average of every 20 seconds(Acres: col. 3, lines 51-52) and based in the difference a feature is enabled or not, the player winning a prize (Acres: col. 10, lines 40-45). Therefore Acres discloses all of the applicant's limitations except the outputting of an authentication code. Due to gaming compliance requirements, a game code must be secure and authenticated (Rowe: col. 9, lines 20-28). Therefore as a means to verify the integrity of an EGM a person of ordinary skill level would include the authentication processes taught by Rowe; to confirm the current state of the EGM or if a jackpot prize was awarded based on a rate of play." (Office Action, page 3).

Applicants respectfully assert that the Examiner is in error when interpreting the teachings of Acres. Specifically, Applicants assert that Acres does not teach the following elements of claim **2**:

- *determining a measure of profitability of the first gaming device;*
- *determining a difference between the measure of profitability and a benchmark measure of profitability;*
- *determining whether to disable the first feature based on the difference;*
- *generating an authentication code based on the use of the first gaming device while the first feature is enabled for use on the first gaming device; and*
- *outputting the authentication code if the first feature should be disabled based on the difference.*

Applicants respectfully note that the Examiner makes several fundamental mistakes when interpreting the teachings of **Acres**. For example, at <u>Acres</u>: col. 10, lines 39-40, there is not taught, as the Examiner asserts "a means to determine the results of the secondary game". Rather, <u>Acres</u> clearly states "then the player is deemed ineligible to win the bonus award from the outcome of the **tertiary** game". (emphasis added). Applicants note the many factual and grammatical errors in the Examiner's assertions merely so as to respectfully note factors which make difficult an understanding of which teachings of <u>Acres</u> the Examiner interprets as corresponding to the claimed elements of claim **2**. Endeavoring to interpret the Examiner's paraphrasing of both the teachings of <u>Acres</u> and the recitations of claim **2**, Applicants proceed under the understanding that the Examiner is asserting that the teaching by <u>Acres</u> of making a player eligible to win a bonus award corresponds to *enabling a first feature for use on a first gaming device* as recited in claim **2**.

Assuming, arguendo, that this is the Examiner's intent, it is quite clear that <u>Acres</u> does not teach or otherwise suggest, at the Examiner's citation or elsewhere, determining any measure of profitability. Even if one accepts the Examiner's assertions that Acres teaches "total coins played since the last triggering event (Acres: Acres: col. 10, 29-30), the rate of play or a maximum bet (Acres: col. 6, lines 56-57)", not one of total coins played, rate of play, or maximum bet is a measure of profitability. To take but one example, measuring the rate of play of a player does not provide a measure of profitability of a gaming device. Is the player receiving a winning outcome more often than average? Less often? More information is needed to determine profitability. Quite simply, a teaching of measuring a rate of

play by <u>Acres</u> does not teach *determining a measure of profitability of the first gaming device* as claimed. Likewise, measuring total coins played or maximum bet does not teach this element of claim **2**.

Furthermore, assuming, arguendo, that determining a player's rate of play is above a predefined threshold teaches determining a difference between two things, as discussed above, it is not a teaching of *determining a difference between the measure of profitability and a benchmark measure of profitability* as claimed. As a result, it is evident that Acres does not teach *determining a measure of profitability of the first gaming device* let alone *determining a difference between the measure of profitability and a benchmark measure of profitability.*

Applicants further respectfully assert that <u>Rowe</u> does not teach *generating an authentication code based on the use of the first gaming device* as claimed. At the Examiner's citation to <u>Rowe</u>: col. 9, lines 20-28, the following is stated:

> FIG. 5 is a flowchart 500 illustrating an exemplary process by which a previously generated gaming application signature is used to authenticate a corresponding gaming application deployed in the field. In response to a visit by a gaming industry regulator to a gaming establishment, access to the establishment's gaming application server (e.g., server 124 of FIG. 1C) is typically provided for the purpose of verifying compliance with the applicable gaming regulations (502). This access may be direct, i.e., via the network administrator's terminal, or indirect, e.g., via a particular gaming machine or other node on the establishment's gaming network.

Later, at col. 9, lines 50-60 <u>Rowe</u> teaches:

An object signature is generated for each of the retrieved objects according to one or more of a variety of techniques as described above (508). The generated object signatures are then combined to form a signature corresponding to the deployed gaming application (510). As mentioned above, this may be achieved using any of a wide variety of conventional and proprietary techniques.

The deployed gaming application signature is then compared to the previously stored original gaming application signature which corresponds to the version of the game certified by the gaming commission (512).

As is evident, Rowe teaches generating a signature for a gaming application and subsequent certification of the gaming application by comparing a previously stored signature with a signature generated by a regulator with access to the gaming machine. Quite simply, Rowe nowhere teaches, at the Examiner's citations or elsewhere, *generating an authentication code based on the use of the first gaming device*, much less based on such use *while the first feature is enabled for use on the first gaming device* as claimed.

It is therefore evident that Acres and Rowe individually fail to teach or otherwise suggest numerous elements of claim **2**. As a result, the combination of Acres and Rowe, such a combination neither suggested nor deemed appropriate, likewise fails to teach numerous elements of claim **2**. As a result, claim **2** is in condition for allowance.

With regards to claims **3-9**, Applicants note that all of claims **3-9** depend upon claim **2** and incorporate all of the elements and limitations of claim **2**. As a result, for the reasons discussed above, claims **3-9** are in condition for allowance.

Applicants further note that the Examiner, referring to the 35 USC §112 rejections of claims **3-5** (discussed above), asserted that "Since the claim language is unclear, for now the Examiner views no difference between a first and second feature." (Office Action, page 4). Applicants merely reassert, as discussed above, that the rejections of claims **3-5** under 35 USC §112 are improper and request substantive examination of all of claims **3-9**.

With regards to claims **18 and 19**, the Examiner asserted that "the data collected by the gaming machine is a means to determine a level of profitability of an EGM and player for the casino establishment (Acres: col. 5, lines 4-12). Therefore every player's game lose equates to more money for the casino and the prior art establishes rate of return for the casino based on the player's wager, rate of play & coin-in deposited criteria being met (Acres: col. 6, lines 56-57). (Office Action, page 4).

As discussed above, both Acres and Rowe fail to teach or otherwise disclose *determining a code based on the measure of performance of the feature* as recited in claim **18**. As a result, claim **18** is in condition for allowance. Further, as claim **19** depends upon independent claim **18** and recites all of the elements and limitations of claim **18**, claim **19** is likewise in condition for allowance.

4.   Claim Rejections – 35 USC §103

The Examiner rejected claims **10 and 20-33** under 35 USC §103(a) as allegedly being unpatentable over Acres in view of Rowe and Acres (US 2001/0055990 A1)(hereinafter, "Acres '990").

With regards to claim **10**, the Examiner asserted that Acres '990 teaches "configuring a pay table based on the rate of usage at the EGM ([Acres '990]: par 37, lines 6-10)." (Office Action, page 5).

Applicants note that claim **10** recites *determining a payout table in accordance with the first feature.* However, as discussed above, the Examiner interpreted making a player eligible to win a bonus award as corresponding to *enabling a first feature for use on a first gaming device* as recited in claim **2** (upon which claim **10** depends). Therefore, assuming, arguendo, the Examiner is correct in paraphrasing the teachings of Acres '990 as teaching configuring a pay table based on the rate of usage at an EGM, Acres '990 would not teach configuring or otherwise determining a payout table *in accordance with the first feature* as claimed. In addition, as claim **10** depends upon independent claim **2** and recites all of the elements and limitations of claim **2**, and, as Acres '990 does not remedy the deficiencies of Acres and Rowe discussed above with respect to claim **2**, claim **10** is likewise in condition for allowance for the reasons discussed above with reference to claim **2**. For all of these reasons, claim **10** is in condition for allowance.

With regards to claim **20-33**, Applicants respectfully note that all of claims **20-33** depend upon claim **18** and recite all of the elements and limitations of claim **18**, and, as Acres '990 does not remedy the deficiencies of Acres and Rowe discussed above with respect to claim **18**, claims **20-33** are likewise in condition for allowance for the reasons discussed above with reference to claim **18**.

Conclusion

At least for the foregoing reasons, it is submitted that all claims are now in condition for allowance, or in better form for appeal, and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remain any questions regarding the present application or the cited reference, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Jeffrey R. Ambroziak at telephone number 203-461-7317 or via electronic mail at jambroziak@walkerdigital.com, at the Examiner's convenience.

Authorization to Charge Fees

Applicants believe that a two month extension of time is required to make this Amendment and Response timely and is filed herewith. If an additional extension of time or other fee be necessary, please grant a petition of an extension of time necessary to make this submission timely. Additionally, please charge any additional fees including the excess claim fee that may be required for this submission as follows:

Deposit Account: 50-0271

Order No. 06-010

Charge any additional fees or credit any overpayment to the same account.

Respectfully submitted,

September 29, 2008   /Jeffrey R. Ambroziak, Reg #47,387/

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